

REMARKS

Reconsideration is requested.

Claims 1, 8 and 12 are pending.

Claim 1 has been revised, without prejudice, to include details from originally-filed claim 3. No new matter has been added.

Claims 8 and 12 have been amended, without prejudice, to obviate the objections to claims 8 and 12 noted on page 3 of the Office Action dated February 13, 2008. The claims have been amended as suggested by the Examiner. No new matter has been added. Entry of the Amendment is requested to obviate the claim objections.

To the extent not obviated by the above amendments, the Section 112, second paragraph, rejection of claims 1, 8 and 12 is traversed. Reconsideration and withdrawal of the rejection are requested in view of the above and the following comments.

Claim 1 has been revised to further confirm that the claimed isolated bacterial strain is a *Exiguobacterium* of the *lactigenes* strain.

One of ordinary skill in the art will appreciate that the claimed bacterial strain is a bacterial strain belonging to the genus *Exiguobacterium* and being of the strain *lactigenes*. The Examiner's assertion that the "claims as written would read on ANY strain of *Exiguobacterium* genus" (see page 4 of the Office Action dated February 13, 2008) is not believed to be an accurate or reasonable interpretation of the claims.

Claim 1 has been revised with regard to the recitation of "the order of" and "said strain" and "in its DNA" in response to the Examiner's objections.

Claim 8 has been amended as suggested by the Examiner however the previous recitation of "The" is believed to be clear and definite.

Similarly, claim 12 has been revised as suggested by the Examiner however the recitation of "a" is believed to be clear and definite.

One of ordinary skill in the art will appreciate that unamended claim 12 requires that the claimed strain contains SEQ ID NO:1, as a characteristic of the claimed invention. Describing features of a claimed product by their characterizing features is well accepted in the U.S. Patent Office. The Examiner is requested to see, for example, the claims of U.S. Patent Nos. 7,368,632 ("1. An isolated polynucleotide comprising a nucleotide sequence characterized in that said nucleotide sequence is selected from a group consisting of a) a nucleotide sequence as shown in SEQ ID NO: 1 and b) a nucleotide sequence encoding a polypeptide having the amino acid sequence as shown in SEQ ID NO: 2 wherein expression of said isolated nucleotide sequence in a transgenic plant increases an abiotic stress tolerance in the transgenic plant compared to an untransformed plant of the same species."), 7,351,552 ("42. The DNA molecule encoding modified pro-.alpha. chain as claimed in claim 35 characterized in that the molecule includes the bases of SEQ ID NO: 9.") and 7,214,520 ("4. The isolated DNA as defined in claim 2 and comprising a DNA characterized by a sequence as set forth in SEQ ID NO: 8, or a portion thereof, said portion encoding said CPMO, in expressible form."). The applicants note that the USPTO on-line database indicates that 331 U.S. Patents have been issued since 1976 which contain the phrases "characterized by",

"SEQ ID NO:" and "DNA" in the claims, suggesting that the objected-to claim language will be well understood by those of ordinary skill in the art.

Entry of the present Amendment and withdrawal of the Section 112, second paragraph, rejection is requested.

The Section 101 rejection of claim 8 is again traversed. The fact that the applicants have deposited the claimed subject matter is clear and persuasive evidence that the claimed subject matter is "the result of human intervention".

MPEP § 2105, cited by the Examiner, explains that

"A review of the Court statements above as well as the whole *Chakrabarty* [*Diamond v. Chakrabarty*, 447 U.S. 303, 206 USPQ 193 (1980)] opinion reveals:

(A) That the Court did not limit its decision to genetically engineered living organisms; " See www.uspto.gov, May 12, 2008.

Moreover, the Examiner will appreciate that U.S. Patent Nos. 6,929,798 ("3. A *S. aureus* bacterial strain deposited with the CCM under accession number CCM 4992, CCM 4993, CCM 4994, CCM 4995, CCM 4996, CCM 4997, or CCM 4998.") and 6,022,537 ("1. An isolated bacterial strain deposited at C.N.C.M on Nov. 24, 1993 under No. I-1378. ") contain claims with recitations similar to the rejected claim 8.

Claim 8 is submitted to define patentable subject matter. Withdrawal of the Section 101 rejection is requested.

The Section 102 rejection of claim 1 over Drancourt (Journal of Clinical Microbiology, Vol. 38, No. 10, October 2000, pages 3623-3630), Farrow (International Journal of Systematic Bacteriology, Vol. 44, No. 1, 1994, pages 74-82) or Fruhling (International Journal of Systematic and Evolutionary Microbiology, Vol. 52, No. 4, July

2002, pages 1171-1176), "in light of" BLAST Basic local alignment search, is obviated by the above amendments. None of the cited art teaches or suggests a product of the above claim 1. Entry of the present Amendment and withdrawal of the Section 102 rejection are requested.

For completeness, the applicants submit the attached Stackebrandt et al ("Taxonomic Note: A Place for DNA-DNA Reassociation and 16S rRNA Sequence Analysis in the Present Species Definition in Bacteriology" International Journal of Systematic Bacteriology, Oct 1994, Vol. 44, No. 4, p. 846-849) related to the relatedness of species having a sequence similarity of 97% or greater with respect to 16S rRNA sequences.

Entry of the present Amendment and a Notice of Allowance are requested.

The Examiner is requested to contact the undersigned, preferably by telephone, in the event anything further is required.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /B. J. Sadoff/
 B. J. Sadoff
 Reg. No. 36,663

BJS:
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100